

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 03-296-A
)	
DONALD THOMAS SURRATT,)	
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, and Gordon D. Kromberg and David H. Laufman, Assistant United States Attorneys, and John T. Gibbs, Department of Justice Trial Attorney, and the defendant's counsel, Peter L. Goldman, pursuant to Rule 11(c) of the Federal Rules of Criminal Procedure, have entered into an agreement, the terms and conditions of which are as follows:

1. The defendant, DONALD THOMAS SURRATT, agrees to plead guilty to Counts One and Six of the pending indictment. Count One charges the defendant with conspiracy to commit an offense against the United States, in violation of Title 18, United States Code, Section 371. The maximum penalty for this offense is a term of five years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. Count Six charges the defendant with transportation of a firearm in interstate commerce, in violation of Title 18, United States Code, Section 924(b). The maximum penalty for this offense is a term of ten years of imprisonment, a fine of \$250,000, full restitution, a special assessment, and three years of supervised release. The defendant is aware that these supervised release terms are in addition to any prison terms the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

The defendant is also aware this case is governed by 18 U.S.C. §§ 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are exceptional reasons why such person's detention would not be appropriate.

2. Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

3. Restitution does not appear to be applicable in this case.

4. The defendant is aware that the defendant's sentence will be imposed in accordance with the Sentencing Guidelines and Policy Statements. The defendant is aware that the Court has jurisdiction and authority to impose any sentence within the statutory maximum set for the offense(s) to which the defendant pleads guilty. The defendant is aware that the Court has not yet determined a sentence. The defendant is also aware that any estimate of the probable sentencing range under the sentencing guidelines that the defendant may have received from the defendant's counsel, the United States, or the probation office, is a prediction, not a promise, and is not binding on the United States, the probation office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. The defendant is aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging all this, the defendant knowingly waives the right to appeal any sentence within the maximum provided in the statute(s) of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatever, in exchange for the concessions made by the United

States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b).

5. The United States will not further criminally prosecute defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts. Therefore, defendant does not have immunity for crimes related to, but not specifically set out in the indictment, criminal information or statement of facts. After the Court's acceptance of this plea, the United States will move to dismiss the remaining counts of the indictment against this defendant. Except where specifically noted, this plea agreement binds only the United States Attorney's Office for the Eastern District of Virginia and the defendant; it does not bind any other prosecutor in any other jurisdiction.

6. The defendant represents to the Court that defendant is satisfied that defendant's attorney has rendered effective assistance. Defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. Defendant understands that the rights of criminal defendants include the following:

a. If the defendant persisted in a plea of not guilty to the charges, defendant would have the right to a speedy jury trial with the assistance of counsel. The trial may be conducted by a judge sitting without a jury if the defendant, the United States, and the judge all agree.

b. If a jury trial is conducted, the jury would be composed of twelve laypersons selected at random. The defendant and defendant's attorney would assist in selecting the jurors by removing prospective jurors for cause where actual bias or other disqualification is shown, or by removing prospective jurors without cause by exercising peremptory challenges. The jury

would have to agree unanimously before it could return a verdict of either guilty or not guilty.

The jury would be instructed that the defendant is presumed innocent, that it could not convict the defendant unless, after hearing all the evidence, it was persuaded of the defendant's guilt beyond a reasonable doubt, and that it was to consider each charge separately.

c. If a trial is held by the judge without a jury, the judge would find the facts and, after hearing all the evidence and considering each count separately, determine whether or not the evidence established the defendant's guilt beyond a reasonable doubt.

d. At a trial, the United States would be required to present its witnesses and other evidence against the defendant. The defendant would be able to confront those witnesses and defendant's attorney would be able to cross-examine them. In turn, the defendant could present witnesses and other evidence in defendant's own behalf. If the witnesses for the defendant would not appear voluntarily, defendant could require their attendance through the subpoena power of the Court.

e. At a trial, the defendant could rely on a privilege against self-incrimination to decline to testify, and no inference of guilt could be drawn from the refusal to testify. If the defendant desired to do so, the defendant could testify in the defendant's own behalf.

7. The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity. In that regard:

a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.

b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.

c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.

d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice. The defendant stipulates to the admissibility of the results of this polygraph examination if later offered in a proceeding to determine the defendant's compliance with this plea agreement.

e. The defendant agrees that the accompanying Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.

f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether a downward departure is appropriate.

g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

8. a. The United States agrees not to use any truthful information provided pursuant to this agreement against the defendant in any other criminal prosecution against the defendant in the Eastern District of Virginia. Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and

the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested.

b. Nothing in this plea agreement restricts the Court's or Probation Office's access to information and records in the possession of the United States. Further, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony. Moreover, nothing in this agreement prevents the government from using such information in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

9. This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation. This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

10. The parties agree that the United States reserves its option to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K of the Sentencing Guidelines and Policy Statements, or Rule 35(b) of the Federal Rules of Criminal Procedure, if in its sole discretion, the United States determines that such a departure is appropriate. The parties agree that in cases where the United States does file such a motion, the United States reserves its option to file a further motion under 18 U.S.C. § 3553(e) to permit a departure under any

applicable mandatory minimum sentence, if in its sole discretion the United States determines that such a further motion is appropriate.

11. The accompanying Statement of Facts signed by the defendant is hereby incorporated into this plea agreement. Defendant adopts the Statement of Facts and agrees that the facts therein are accurate in every respect and that had the matter proceeded to trial, the United States would have proved those facts beyond a reasonable doubt.

12. The defendant agrees to forfeit all interests in the AK-47 style rifle seized from his residence on May 8, 2003 as property involved in the offenses of conviction. The defendant further agrees to waive all interest in any such asset in any administrative or judicial forfeiture proceeding, whether criminal or civil, state or federal. The defendant agrees to consent to the entry of orders of forfeiture for such property and waives the requirements of Federal Rules of Criminal Procedure 32.2 and 43(a) regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. Defendant acknowledges that he understands that the forfeiture of assets is part of the sentence that may be imposed in this case and waives any failure by the court to advise him of this, pursuant to Rule 11(b)(1)(J), at the time his guilty plea is accepted.

13. If the defendant fails in any way to fulfill completely all of the obligations under this plea agreement, the United States may seek release from any or all its obligations under this plea agreement.

14. If the defendant fails to fulfill the obligations under this plea agreement, the defendant shall assert no claim under the United States Constitution, any statute, Rule 410 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules of Criminal Procedure, or any other

federal rule, that defendant's statements pursuant to this agreement or any leads derived therefrom, should be suppressed or are inadmissible.

15. Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the United States' decision whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the United States' sole discretion.

16. The defendant hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

17. This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The United States has made no promises or representations except as set forth in writing in this plea agreement. The defendant acknowledges that no threats have been made against the defendant and that the defendant is pleading guilty freely and voluntarily because the defendant is guilty. Any modification of this

plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

18. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal indictment or criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and I voluntarily agree to it.

Date: _____

Donald Thomas Surratt
Defendant

19. Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending indictment or criminal information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with

the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____
Peter L. Goldman
Counsel for Defendant

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Gordon D. Kromberg
David H. Laufman
Assistant United States Attorneys

John T. Gibbs
Trial Attorney
Counterterrorism Section, Criminal Division
United States Department of Justice

APPROVED:

_____ Date: _____

Plea Agreement (Revised April 30, 2003)

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Alexandria Division

UNITED STATES OF AMERICA)	
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v.)	CRIMINAL NO. 03-296-A
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DONALD THOMAS SURRATT,)	
)	
Defendant.)	

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt:

1. Beginning in or about January 2000 and continuing thereafter up to May 8, 2003, within Fairfax County, Virginia, and elsewhere, defendant DONALD THOMAS SURRATT unlawfully, willfully, and knowingly conspired with others to begin, provide for, prepare a means for, and take part in military expeditions and enterprises to be carried on from the United States against the territory and dominion of foreign states, districts and peoples with whom the United States was at peace, in violation of Title 18, United States Code, Sections 371 and 960, and to transport firearms in interstate commerce with reason to believe that such firearms would be used to commit a felony offense, in violation of Title 18, United States Code, Section 924(b). In furtherance of this conspiracy, on or about January 29, 2000, DONALD THOMAS SURRATT used the American Express card of Hammad Abdur-Raheem to purchase a Saiga 7.62 mm semi-automatic rifle in Forrestville, Maryland.

2. On or about February 24, 2000, in Fairfax County, DONALD THOMAS SURRATT transported an AK-47 style rifle in interstate commerce to a firing range in Fairfax, Virginia, with

reason to know that by using that firearm to train with another to fight against Indians in Kashmir and Russians in Chechnya, he was going to use it to commit a felony offense.

3. Starting in or about January 2000, DONALD THOMAS SURRATT agreed with others to prepare for violent jihad on behalf of Muslims in Kashmir, Chechnya, the Philippines and other countries and territories, against countries, governments, military forces, and peoples that the conspirators believed to be the enemies of Islam. The defendant and his conspirators agreed to conduct their preparation for jihad in secrecy and to refuse to disclose any information about their activities if asked by law enforcement.

4. For the purpose of preparing to fight in Kashmir, Chechnya, and elsewhere around the world, DONALD THOMAS SURRATT and his conspirators obtained AK-47-style rifles and similar weapons to develop familiarity and skills with the weapons of choice used by mujahideen in Bosnia, Chechnya, and Kashmir. For the same reasons, they practiced marksmanship with AK-47-style rifles at firing ranges operated by private parties or the United States military.

5. For the purpose of preparing to fight in Kashmir, Chechnya, and elsewhere around the world, DONALD THOMAS SURRATT helped train other conspirators in conducting small-unit military tactics on private property near Fredericksburg, Virginia. They used paint-ball weapons and equipment to practice small-unit military tactics and simulate actual combat in preparation for violent jihad.

6. Upon the return of Ibrahim Al-Hamdi to the United States, DONALD THOMAS SURRATT understood that he had traveled from the United States to join a group in Pakistan fighting Indians in Kashmir. SURRATT understood that while there, Al-Hamdi used various weapons, including small arms, machine guns, and grenade launchers, and fired at Indian

positions in Kashmir. DONALD THOMAS SURRATT knew that, after Al-Hamdi returned to Virginia in 2000, Al-Hamdi and Randall Todd Royer each encouraged other conspirators to go to Pakistan to serve as well with a group in Pakistan fighting Indians in Kashmir. DONALD THOMAS SURRATT knew that, in 2001, Seifullah Chapman traveled from the United States to join a group in Pakistan that was engaged in fighting Indians over Kashmir.

7. After Ibrahim Al-Hamdi returned from Pakistan in September 2000, DONALD THOMAS SURRATT attended a meeting at the Dar Al Arqam in which Al-Hamdi described his experiences with the mujahideen in Pakistan, and encouraged the attendees to serve with them as well. After Al-Hamdi returned from the mujahideen camp in Pakistan, the small unit tactical training with paintball equipment became more serious, and DONALD THOMAS SURRATT knew that what they were doing was preparing to engage in actual fighting.

8. From 2000 onward, DONALD THOMAS SURRATT knew that certain of the conspirators prepared to become mujahideen and die “shaheed” -- that is, as martyrs in furtherance of violent jihad - - in Kashmir, Chechnya, and elsewhere around the world. Knowing that, DONALD THOMAS SURRATT nevertheless continued to work with his conspirators on small unit military tactics and marksmanship in order to make them more able to engage in violent jihad in Kashmir, Chechnya, and elsewhere around the world.

9. DONALD THOMAS SURRATT instructed conspirators in military tactics based upon his training and experience in the United States military. SURRATT based parts of his instruction on small unit military tactics on his United States Marine Corps field training manual. SURRATT arranged the conspirators into groups of two to practice fire and maneuver techniques and later into teams of four to practice the same techniques.

10. In preparation for violent jihad in Kashmir, Chechnya, and elsewhere around the world, including in countries with which the United States is at peace, on several occasions,

DONALD THOMAS SURRATT trained on his AK-47-style weapon at a firing range in Fairfax, Virginia, and trained another conspirator to use it as well. On or about February 24, 2000, SURRATT practiced with his weapon with Hammad Abdur-Raheem at a firing range in Fairfax, Virginia.

11. On or about January 29, 2000, in Forestville, Maryland, DONALD THOMAS SURRATT possessed a Saiga 7.62 semi-automatic rifle in furtherance of a conspiracy to begin, provide for, prepare a means for, and take part in military expeditions and enterprises to be carried on from the United States against the territory and dominion of foreign states, districts and peoples with whom the United States was at peace. On or about February 24, 2000, in Fairfax, Virginia, DONALD THOMAS SURRATT used and discharged a AK-47-style rifle in furtherance of that conspiracy.

12. On or about May 8, 2003, in Suitland, Maryland, Donald Thomas Surratt possessed an AK-47-style rifle.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By: _____
Gordon D. Kromberg
David H. Laufman
Assistant United States Attorneys

John T. Gibbs
Trial Attorney
Counterterrorism Section
Criminal Division, U.S. Department of Justice

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

DONALD THOMAS SURRATT

I am DONALD THOMAS SURRATT's attorney. I have carefully reviewed the above Statement of Facts with him. To my knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Peter L. Goldman
Attorney for DONALD THOMAS SURRATT

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UNITED STATES OF AMERICA)	
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Defendant.)	

ORDER DISMISSING COUNTS

_____ Upon motion of the United States of America, pursuant to a plea agreement between defendant DONALD THOMAS SURRETT and the government, in which the defendant appeared before the Court on August 22, 2003 and entered a plea of guilty to Counts 1 and 6 of the indictment, it is hereby

ORDERED that Counts 3, 5, 16, 19, 21, and 40 of the indictment are hereby dismissed with respect to defendant DONALD THOMAS SURRETT only.

LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

Date: _____
Alexandria, Virginia

I ASK FOR THIS:

Gordon D. Kromberg
Assistant United States Attorney